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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,652	01/13/2004	Blake Cumbers	5590.00010	3926
29747	7590	05/23/2006	EXAMINER	
GREENBERG TRAURIG 3773 HOWARD HUGHES PARKWAY SUITE 500 NORTH LAS VEGAS, NV 89109			SAGER, MARK ALAN	
		ART UNIT	PAPER NUMBER	
		3712		



DATE MAILED: 05/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/757,652	CUMBERS, BLAKE	
	<b>Examiner</b>	<b>Art Unit</b>	
	M. A. Sager	3712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 01 March 2006.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-5, 10-15 and 20-29 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-5, 10-15, 20-29 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____ .

***Claim Rejections - 35 USC § 102***

1. Claims 1-2, 4-5, 10-11, 13, 15, 20-21, 23 and 26-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Matchett (5229764). This holding is maintained from prior action and reiterated herein. Response to Applicants' remarks of patentability is provided below and incorporated herein. As best understood, Matchett discloses an electronic gaming machine (fig 10-11), a gaming system (figs. 1-11), a system and a method (figs 1-11) comprising a processor (ref. 114), a biometric identification means that is integrated in a gaming machine and that acquires physical features of player's face, or acquires a fingerprint of player (1:60-2:12, 2:17-20, 3:10-51, 6:34-48, figs.1-11, esp. 10-11), where biometric id means is remotely located from gaming machine (2:17-20, 6:34-48), further comprising an input means for a player to input an identification code, said code being associated with biometric player identification, for registering the player for participation where 'registering' is to enter in an official register, i.e. access or authentication such that an account for access was already established and the input of code is for authentication/access thereto rather than meaning registration such as creating a new account (6:34-49, 9:40-43; 12:11-13:46), further comprising audio or visual means for prompting player input such as a keypad (12:31-13:46, esp. 12:40-43, fig 1-11, esp. 10-11).

***Claim Rejections - 35 USC § 103***

2. Claims 3, 14, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matchett in view of Daugman (5291560). This holding is maintained from prior action and reiterated herein. Response to Applicants' remarks of patentability is provided below and incorporated herein. As best understood, Matchett discloses a machine or system as claimed including fingerprint and facial or retinal scan (supra) but lacks iris. Matchett also states that his

invention includes ‘all systems and configurations by which biometric and other data are continuously and/or intermittently taken and compared to a body of similar reference data for the purpose of authentication (13:36-46). Daugman discloses a system teaching identification based on iris analysis that is a passive biometric personal identification process that is superior to fingerprint analysis (abstract, 2:31-3:36, 4:20-40, figs. 1-12). Matchett emphasizes passive biometric personal identification. Therefore, it would have been obvious to an artisan at a time prior to the invention to add iris as taught by Daugman to Matchett’s matrix for passive personal identification that is superior to fingerprint analysis. Particular biometric process fails to patentably distinguish.

3. Claims 12, 24-25 and 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matchett in view of either Franchi (5770533) or Slater (5613912). This holding is maintained from prior action and reiterated herein. Response to Applicants’ remarks of patentability is provided below and incorporated herein. Matchett discloses claimed invention (sic) except live gaming table (clm 12, 28-29), track gaming play of said player (clm 24) and wagering (clm 25). Player tracking at a gaming table is by Official Notice notoriously well known. As evidence only, see 6142876 background of invention therein (1:11-2:3, esp. 1:48-2:3). Franchi discloses a customer tracking of players of a wagering game or live gaming table where an anonymous user entering a related number (i.e. PIN) in a customer tracking system was known for opening a customer account for tracking at a gaming machine or gaming table (2:14-35, 38-67, 3:1-47, 4:63-7:46, esp. 7:12-15); while, Slater discloses bet tracking system for wagering game such as at a live gaming table so as to track gaming play of said player (abstract, figs. 1-4B) where player tracking may be for providing comps in order to entice player loyalty.

Therefore, it would have been obvious to an artisan at a time prior to the invention to add live gaming table, track gaming play of said player and wagering as taught by either Franchi or Slater to Matchett's matrix for improved identification of player and therefore improved tracking of player game play for providing comps thereby.

***Response to Arguments***

4. Applicant's arguments filed Mar. 1, 2006 have been fully considered but they are not persuasive. Regarding Applicants' assertion that Matchett fails to disclose at least one element of the claimed invention, the examiner respectfully disagrees. Matchett discloses an electronic gaming machine comprising claimed structure, as broadly claimed. Additionally, it is noted that Applicant acknowledges that Matchett is a passive system that is designed to initially identify and verify the user of a system, including computer-based gaming system. Thus, the claimed invention fails to preclude Matchett's verifying the identify of the player.

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987) (The preamble of claim 1 recited that the apparatus was "for mixing flowing developer material" and the body of the claim recited "means for mixing ..., said mixing means being stationary and completely submerged in the developer material". The claim was rejected over a reference which taught all the structural limitations of the claim for the intended use of mixing flowing developer. However, the mixer was only partially submerged in the developer material. The Board held that the amount of submersion is immaterial to the structure of the mixer and thus the claim was properly rejected.).

In this case, Matchett teaches all claimed structure, as broadly claimed (sic).

While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. >In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also In re Swinehart, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971); In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). “[A]pparatus claims cover what a device is, not what a device does.” Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original). In this case, Matchett teaches structure of claimed invention (supra).

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

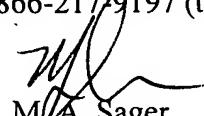
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3712

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. A. Sager whose telephone number is 571-272-4454. The examiner can normally be reached on T-F, 0700-1730 hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's acting supervisor, John Hotaling can be reached on 571-272-4437. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



M/A. Sager  
Primary Examiner  
Art Unit 3712

mas